



INTERIOR BOARD OF INDIAN APPEALS

Jack Schaffer v. Aberdeen Area Director, Bureau of Indian Affairs

33 IBIA 255 (04/29/1999)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

JACK SCHAFFER,	:	Order Docketing and Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 99-54-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	April 29, 1999

The Board of Indian Appeals (Board) has received a letter from counsel for Appellant Jack Schaffer inquiring as to the status of an appeal from a September 2, 1997, decision issued by the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA). The decision involved a declination to return range unit grazing fees for Range Units Nos. 81 and 151 on the Cheyenne River Sioux Reservation, based on the finding that Appellant's alleged pasture authorization with another individual was an invalid outside agreement not approved by BIA.

With his inquiry letter, Appellant submitted a copy of a notice of appeal and statement, both of which appear to have been mailed on October 2, 1997. The notice of appeal is addressed to the Assistant Secretary - Indian Affairs. Neither of the documents shows that it was filed with, or served on, the Board. The Board first received Appellant's notice of appeal on April 26, 1999.

The Area Director's decision stated:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203 * * *. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to: (1) the Assistant Secretary - Indian Affairs, U.S. Department of the Interior, MS-4140, MIB, 18th and C Streets, NW, Washington, DC 20240; (2) each interested party known to you; and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties.

* * * If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appellant has failed to file a timely notice of appeal. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. See, e.g., Charlie v. Navajo Area Director, 30 IBIA 302 (1997), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed as not being timely filed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge